



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 11, 2015

Mr. Matthew L. Grove
Assistant County Attorney
County of Fort Bend
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2015-09130

Dear Mr. Grove:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 563162.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for all calls for service for a specified address during a specified time period. You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by section 48.101 of the Human Resources Code, which pertains to the disclosure of reports of abuse, neglect, or exploitation of elderly and disabled persons in certain facilities. Section 48.101 provides, in pertinent part, as follows:

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(a) The following information is confidential and not subject to disclosure under [the Act]:

(1) a report of abuse, neglect, or exploitation made under this chapter;

(2) the identity of the person making the report; and

(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by [the Texas Department of Family and Protective Services (the “DFPS”)] or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101(a), (b). Section 48.051 of the Human Resources Code provides “a person having cause to believe that an elderly or disabled person is in the state of abuse, neglect, or exploitation” shall report certain prescribed information to the DFPS or another appropriate state agency. *See id.* § 48.051(a). The only entities authorized to conduct an investigation under chapter 48 of the Human Resources Code are DFPS and certain other state agencies, depending on the circumstances surrounding the incident. *See id.* §§ 48.151, .152, .252, .301. Thus, reports made by the sheriff’s office generally are not subject to section 48.101. Report numbers 14-20905, 14-30567, 14-35229, and 14-37769 were created by the sheriff’s office in connection with criminal investigations conducted by the sheriff’s office. However, the submitted information reveals the Adult Protective Services division of DFPS (“APS”) was involved in the investigation of report numbers 14-35229 and 14-37769. Further, you inform us report numbers 14-35229 and 14-37769 were provided to APS. Thus, because the legislature expressly made all information used by the APS in its investigations under chapter 48 of the Human Resources Code confidential, report numbers 14-35229 and 14-37769 are confidential under section 48.101. *See id.* § 48.101(a)(3). Such information must not be released to the public, except for a purpose consistent with chapter 48 and as provided by DFPS or investigating state agency rule or federal law. *See id.* § 48.101(b). *But see id.* § 48.101(c)-(f) (permitting release of confidential information in certain circumstances). The sheriff’s office does not indicate, nor does it appear, an exception to confidentiality applies in this instance. Accordingly, we conclude the sheriff’s office must withhold report numbers 14-35229 and 14-37769 under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.² Although you state referrals were made to

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

APS for report numbers 14-20905 and 14-30567, you have not demonstrated the information at issue was used or developed in an investigation by APS under chapter 48 of the Human Resources Code. *See id.* § 48.101(a)(3). Thus, you have failed to demonstrate report number 14-20905 or 14-30567 pertains to an investigation conducted by an entity authorized to conduct such an investigation under chapter 48. Accordingly, the sheriff's office may not withhold report number 14-20905 or 14-30567 under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report number 14-30567 relates to an ongoing investigation. Based on your representation and our review, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) of the Government Code is applicable to report number 14-30567.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report numbers 14-20905, 14-6070 and 14-36945 pertain to concluded investigations that did not result in conviction or deferred adjudication. Based on your representations and our review, we agree section 552.108(a)(2) is applicable to report numbers 14-20905, 14-6070 and 14-36945.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, the identity of the complainant. *See* ORD 127 at 3-4. Accordingly, with the exception of basic information, the sheriff's office may withhold report number 14-30567 under

section 552.108(a)(1) of the Government Code and report numbers 14-20905, 14-6070 and 14-36945 under section 552.108(a)(2) of the Government Code.³

You seek to withhold portions of the basic information in report number 14-30567 under the common-law informer's privilege. Section 552.101 of the Government Code also encompasses information protected by the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. *See* Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton Rev. Ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988).

You state portions of the basic information in report number 14-30567 identify a complainant who reported to the sheriff's office a possible violation of law. We understand the subject of the complaint does not know the identity of the informer. Based upon your representation and our review, we conclude the sheriff's office has demonstrated the applicability of the common-law informer's privilege to the information at issue. Therefore, the sheriff's office may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.⁴

We understand you to assert portions of the remaining basic information in report numbers 14-20905, 14-30567, and 14-36945 are confidential under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find you have failed to demonstrate how any of the remaining basic information is highly

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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intimate or embarrassing and not of legitimate public interest. Therefore, the sheriff's office may not withhold any portion of the basic information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the sheriff's office must withhold report numbers 14-35229 and 14-37769 under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code. With the exception of basic information, the sheriff's office may withhold report number 14-30567 under section 552.108(a)(1) of the Government Code and report numbers 14-20905, 14-6070 and 14-36945 under section 552.108(a)(2) of the Government Code. In releasing basic information from report number 14-30567, the sheriff's office may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 563162

Enc. Submitted documents

c: Requestor
(w/o enclosures)